

RENETTE JOHNSON

PO 674-C71120

VABCA-5470

**VA MEDICAL CENTER
WACO, TEXAS**

Renette Johnson, Waco, Texas, for the Appellant.

Catherine A. Rich, Esq., Trial Attorney, Dallas, Texas; *Philip S. Kauffman, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE ANDERS

This appeal arises under Purchase Order No. 674-C71120 (PO) for transcription services issued to Renette Johnson (Contractor) by the Department of Veterans Affairs (VA or Government) Medical Center, Temple, Texas. Appellant claims entitlement to \$13,657.63 for services rendered pursuant to the PO.

The parties elected to submit their cases without a hearing, pursuant to Board Rule 11.

The record consists of the Complaint and Answer; affidavits of the Contracting Officer (CO); Peggy Zimmerman, owner of Zimmerman Court Reporters, PC; Joe L. Crews, president of Waco Court Reporters; and the Appeal File submitted pursuant to Board Rule 4, consisting of seven (7) exhibits, all submitted by the VA. Other than its Complaint and a two sentence response to the Government's submissions, Appellant submitted no documents for the record. Neither party submitted briefs.

FINDINGS OF FACT

The PO described the work as providing typing and transcription services for EEO Investigator Walter Dry in EEO Case Nos. 97-1646-49, 1653, 1655, 1657-60, 1662-1664, and 1666. The work was to begin Monday, August 11, 1997, and was not to exceed 30 days. (R4, Tab 3)

Appellant was to provide an original and seven (7) copies of the EEO Investigative Report to the EEO Officer for all 14 cases. Paragraph D of the PO provided that Appellant would be paid \$.17/line of transcription and \$7.85/hour for filing, tabbing, and copying. (R4, tab 3)

On October 21, 1997, Appellant filed a claim with the Contracting Officer for payment of \$13,657.63 for services rendered. This represents the difference between the amount invoiced by Appellant and the amount paid by the VA.

In its October 21, 1997 claim letter to the CO, Appellant explained its method of calculation as follows:

My invoice amount was calculated based on 17 cents per line for each original document produced and \$7.85 per hour for copying and assembling of folders.

It is my understanding that the definition of original is where the disagreement occurs. I have always considered an original affidavit as one having an original signature whereas a copy does not. This is consistent with past practice of services I have rendered to the EEO department of the Central Texas Veterans' Health Care System. This is evidenced by a copy of purchase order 674-C70613 and my detailed invoice for services that I provided. Copies of these documents are attached for your review. (R4, tab 6)

Purchase Order No. 674-C70613, estimated at \$2,000, provided for payment at the rate of \$.17/line for typing and \$7.85/hour for tabbing, indexing, and copying. The Appellant's total invoice was \$771.63 and appears to have included \$.17/line charges for copies. (R4, tab 6) There is no evidence as to whether the VA took exception to this invoice.

In its final decision on the claim involving Purchase Order No. 674-C71120, the VA noted the large difference between the Government's estimate (\$4,900) for the contract work and Appellant's claim (\$13,657.63). The CO's decision reads, in part, as follows:

[Y]ou have considered any document which has an original signature on it to be an "original document" and that all lines on that "original document" are counted as transcribed lines.

The affidavits you provided under the purchase order were originally transcribed once and duplicated thirteen times each thereafter. You have invoiced as if all lines were transcribed when, in reality, only the case number and signature blocks were typed again on the thirteen copies. This practice is not consistent with standard industry definitions of a transcribed line and does not, therefore, comply with the negotiated rates under the purchase order.

VA has made a payment of \$4,579.32 which is based on the actual lines transcribed and your invoiced amounts for work done at the hourly rate of \$7.85. (R4, tab 7)

In her affidavit, Peggy A. Zimmerman states that she has been employed by Zimmerman Court Reporters, PC, of Temple, Texas, since 1979 and has owned the concern since 1982. She further states that:

[A]s a person employed in the position of certified court reporter, who has knowledge of the standard procedure for pricing work, such as the typing of depositions, [is] to charge only for the original typing and all other documentation relating to the deposition would be considered to be copy which would be reimbursable under the hourly rate.

In his affidavit, Joe L. Crews states that he has been employed as president of Waco Court Reporters of Waco, Texas, since 1977. He makes the same statement as Peggy Zimmerman, *supra*, except that he has crossed out the word "hourly" in the last sentence and substituted the word "copy."

The Government submitted the two above-referenced affidavits "as substitution for a brief."

The Appellant's only submission for the record is a letter to the Board dated August 26, 1998 which reads, in its entirety, as follows:

In response to documentation submitted by the Government attorney in the above case, my response is that charges and payment for services rendered by me to the VA were based on past practice only. Proof of this is currently in the record.

The Purchase Order is clear. Transcription services are to be paid at the rate of \$.17/line and copying is to be reimbursed at the rate of \$7.85/hour. Appellant has provided no evidence in support of its assertion that its "charges and payment for services" were based on past practice. The previous purchase order referred to by Appellant, No. 674-C70613, also provides for payment at the rate of \$.17/line of transcription and \$7.85/hour for filing, tabbing, and copying. (R4, tab 3)

DISCUSSION

There is no ambiguity in the Purchase Order provision for payment. Transcription will be paid for at the rate of \$.17/line and filing, tabbing, and copying at the rate of \$7.85/hour. Appellant's argument is based on whether a document is considered an original. The issue is not whether a document is considered an original, but how much transcription is performed. No additional transcriptions were required on the copied documents. Appellant's assertion that copies should be considered originals if they have a signature added to them is without merit.

Affidavits from other court reporting firms in that area affirm that the standard procedure is to charge only for the original typing; that all other documentation would be considered copy, reimbursable under the hourly rate.

The decision by a claimant to submit its case pursuant to Board Rule 11 does not in any way lessen its burden of proving the necessary facts to support its request for an equitable adjustment. A claimant's failure to present affidavits of sufficiently clear and probative documentary evidence will almost surely result in denial of its appeal. The Board has repeated this admonition in prior Rule 11 proceedings. *See, e.g: Sefco Constructors*, VABCA Nos. 2747, *et. al.*, 93-1 BCA ¶ 25,458; *Jen-Beck Associates*, VABCA Nos. 2107 *et. al.*, 87-2 BCA ¶ 19,831 at 100,322; *Spanjer Brothers, Inc*, VABCA No. 1819, 84-1 BCA ¶ 16,926.

Appellant argues that it used the same billing procedure (charging transcription rates for copies that received an original signature) and was paid in full by the VA. The PO submitted to substantiate that allegation has language that is substantially similar to the one before us (R4, tab 6). It does appear that Appellant charged the VA \$.17/line for copies. The total invoice was \$771.63 and the PO estimate was \$2,000. There is nothing in the record to indicate what the VA actually paid. If, as Appellant alleges, the VA paid per line rates for copies, that may have been in error. Both PO's set the rate as \$.17 per line for typing and transcription, neither of which is involved in making copies. One previous event does not establish a course of dealing or what may simply be an erroneous payment does not establish a past practice that would override the clear language of the PO. *Western States Construction Company, Inc.*, ASBCA No. 37611, 92-1 BCA ¶ 24,418.

DECISION

For the foregoing reasons, the appeal is denied.

DATE: October 7, 1998

Dan R. Anders
Administrative Judge
Panel Chairman

We concur:

James K. Robinson
Administrative Judge

William E. Thomas
Administrative Judge